michigan municipal league

MEMO

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to	Senate Economic Development Committee	**from**	Andy Schor, Assistant Director of State Affairs
subject	SB 1064	**date**	April 18, 2012

The Michigan Municipal League opposes SB 1064. Our members have both policy and technical concerns with this legislation. Several members indicated a desire to come and testify, but were unable due to the short time between introduction, posting, and consideration of the bill.

League members expressed the following opposition:

- We are against the Legislature preempting local control and home rule.

- The Michigan Zoning Enabling Act, when it was created in 2006, followed previous zoning law of the last 100 years. State law generally does not dictate zoning or special land use approval. Zoning is the process whereby a community defines its essential character, and this bill rejects that local control.

- This would nullify the local unit's ability to uniformly treat non-conforming uses and structures. A community that has adopted a new telecommunications ordinance, which sets a lower maximum height for towers, and has a tower in over the new height limit would be nonconforming. Under the current provisions of the Michigan Zoning Enabling Act, that tower would have a protected status as a grandfathered use and structure. However, the local community still retains the right to limit the expansion of the non-conforming use or structure. The MZEA provides a fair and open process for private parties to seek exceptions for their causes through the variance process with the local ZBA. This legislation would remove that right from locals for this particular use and structure.

- The definition of "Original height" needs to be better defined in order to be clear that it is the total height of the tower, as originally approved by the local unit. We don't want to see a community have to fight because a company wanted to collocate on a tower and argue that the 10% increase is based on the current height of the tower which may have already been increased by 10% if there have been previous collocations under this bill.

- If the company wants the tower height to be increased by more than 10%, local authority to object would be limited by subsection (7). Why are we giving them the

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additional height? It doesn't make sense to hand out a unilateral right to make towers 10% taller. The community and residents in that community could have a good reason for not wanting that tower any taller. Maybe the community requires a tower removal bond, as many do, calculated on the height of the tower. Maybe the tower is currently designed to resemble a tree or flagpole or other relatively decorative design. The extra 10% could ruin that? Additionally, communities need to plan for the possibility that a tower could become abandoned, which would result in a dangerous rusting hulks that the community will need to remove

- Communities would not be able to require more aesthetic designs (trees, flagpoles, etc.) under this proposal. Or impose other requirements unique to the neighborhood.

- Why doesn't the bill just use the same standards and procedures as the existing special land use provisions in MCL 125.3502 and 3504? The bill uses the term "special land use," but changes its meaning.

- The 14 day requirement makes wireless communications equipment more important than any other decision before the ZBA. Your residents will have to wait longer for decisions because the ZBA will now trump any other decision. Why should these towers jump to the front of the line and be more important that local residents or businesses? Residents, landlords, home builders, realtors, etc will all be trumped by wireless communications equipment. Again, this is a case of the Legislature violating local control for zoning decisions.

- The 14 day period for application processing does not account for many possible issues that may not be entirely controllable by local government.

- The 60 day period for approval or denial of special use approvals that may be required is also too restrictive for the same reason.

- The automatic approval of things in section 6 would depend on the definition of "timely".

- There are certain circumstances where these towers are not appropriate. For example, directly adjacent to a residential use when most cell carriers are requiring backup generators to be installed for each of their facilities. After Katrina, most cell companies require that each of their facilities have generators for backup if there is tower loss, and fuel tank to have gas for generator, noise, vibration, odor coming from this. This could be a severe nuisance for odor and

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noise for neighbors. Local units of government need to be able to review the location of these on a case-by-case basis.

- Why the maximum fee of $250 in state law pre-empting local control? The local unit of government cannot charge more for the fee than the actual cost. This was decided by the Bolt decision of the Supreme Court. If the actual costs are more than that, you now have the taxpayers subsidizing the review of the wireless telecomm equipment.

- This section would preempt local control by rendering a local community's Site Plan Escrow account null and void for this particular request. Having an escrow fee in place is not uncommon and is a fair means of ensuring that proposed projects do not burden the resources of the local unit or otherwise have a negative impact on the community. One community contacted us and said that the beginning deposit amount is $500, with anything not used returned to the applicant.

- Another community told me that the max fee of $250 already is below their true costs for this and would not account for cost inflation over time, setting of fees for special use hearings are otherwise set locally under existing law and this type of special use should follow the same fee schedules as the others.

- Some communities have to hire a consultant to review cell requests and often this amount exceeds $250.

- The Federal government already regulates timeliness so this is duplication; given that most local units are very short on staff the timelines as proposed are extremely burdensome.

- The federal Section 6409 of the Middle Class Tax Relief Act, specifically mandates local approval of co-locations.

- The FCC has also issued a federal "shot clock order" in November of 2009. This requires a local unit of government to act within 90 days. The reasoning is that this is easier to process than a new cell tower because there is no new construction.

- For new towers the shot clock is 150 days. This applies to all requests that are NOT co-locations.

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- A tower is considered a new tower if it increases in height more than 10%, it adds more than 4 equipment cabinets, a new antenna extends more than 20 feet from the tower and excavation is needed outside the current site.

- As a result of Section 6409 and the FCC's shot clock order, this legislation is not necessary.

- Most importantly the pre-emption of special land use approval will have significant harm on property values.

- The courts have found that cell towers harm adjacent property values based upon testimony by assessors and real estate brokers. Allowing unlimited growth and modification of cell towers will further harm property values in a time where property values have already plummeted.

- Currently many cell tower sites are camouflaged as trees, signs, clock towers, public art, light standards, parts of buildings, etc. specifically to avoid harm to property values. This bill would negate those efforts.